

## Background

Section 6103 of the 2002 Act amended the RE Act, to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the costs of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. Title VI defines eligible communities and entities, and sets forth the types of loans, as well as a state allocation system and a priority system for consideration of applicants.

Section 6103(b) of the 2002 Act provides that the regulations for this program are exempt from the notice and comment provisions of section 553 of title 5, United States Code (Administrative Procedures Act). RUS held a public meeting on June 27, 2002, in order to obtain background information for consideration in the implementation and administration of the Rural Broadband Access program. There were 22 presenters including lenders, telecommunications and broadband providers, trade associations, and capital market specialists. The presenter's written comments are available on the RUS Web site at [http://www.usda.gov/rus/telecom/publicmeeting/public\\_meeting.htm](http://www.usda.gov/rus/telecom/publicmeeting/public_meeting.htm).

RUS considered the oral and written comments of the presenters as well as the Conference Report accompanying the 2002 Act (Report 107-424) to formulate the regulations implementing the Rural Broadband Access Loan and Loan Guarantee Program.

**Types of loans.** The Rural Broadband Access Loan and Loan Guarantee Program will offer three types of loans: (1) A direct cost-of-money loan, bearing interest at the cost of borrowing to the Department of the Treasury for obligations of comparable maturity; (2) a direct 4 percent loan; and (3) a private lender guaranteed loan.

Eligible entities can apply for a direct cost-of-money loan or a private lender guaranteed loan to provide service in any eligible rural community. Four-percent direct loans will be available only to provide service in the most rural, economically-challenged communities which currently do not have broadband service to residents.

Four-percent direct loans will be available to eligible entities proposing to provide service in communities with no residential broadband service, population of 2,500 or less, and certain density and income requirements. The density requirement is a maximum number of persons per square mile of the applicant's defined service area. The income requirement is the average per

capita income in the county containing the applicant's service area as a percent of the national average per capita income. This requirement will be set at a maximum number. The income and density requirements are subject to review and adjustment on an annual basis and will be published in the **Federal Register** at the beginning of each fiscal year.

All the requirements for a 4-percent loan are in place to encourage build out of broadband facilities to the very poor, rural parts of the country. RUS feels that offering a fixed low interest rate program for these areas helps offset the high cost of serving remote areas which require more telecommunications plant per subscriber than the more densely populated communities.

**Credit support requirement.** At the public hearing on June 27, RUS heard comments from lenders and equity capital specialists on financing broadband infrastructure projects. In all cases, the lender or investor would require the borrower to contribute support to the project, from 35 to 100 percent of the cost of the project. This reflects the risk that lenders and investors perceive to exist in these projects. The contributions can be in the form of assets, cash, or guarantees from parent companies.

RUS believes that prudent lending practice, especially in the current telecommunications environment, dictates a credit support requirement as well. RUS also considered what form of support would be appropriate.

RUS set the requirement at a lower percent than other telecommunications lenders, 20 percent of the requested loan amount. This lower requirement is enhanced by the requirement that certain applicants have, at the time of application, sufficient cash on hand to support operations for one year. This amount can be part of the minimum 20 percent requirement, or if the cash required for one year of operating expenses is in excess of 20 percent of the loan, that cash requirement will be the minimum requirement. RUS set this requirement for start-up broadband operations to assure that they have cash on hand to cover operations until revenues generate sufficient cash flows to pay expenses as they become due.

RUS recognizes that the expenses of an ongoing telecommunications company can be covered through a regular stream of revenues, and therefore the need to have a large amount of cash on hand is unnecessary and imprudent. This requirement may deter operating telecommunications companies with a viable business plan from applying for funds to upgrade

facilities for broadband, perhaps denying a rural community of broadband service. Therefore, RUS will waive the minimum cash requirement for an ongoing company that can show positive cash flow for the two calendar years immediately preceding the date of the application.

**Priority Consideration.** Title VI directs RUS to give priority to eligible rural communities in which broadband service is not available. In addition, following Congressional guidance in the Conference Report accompanying the 2002 Act (H.R. Rpt. 107-424, 107th Cong. 2nd Sess., 579), RUS will evaluate for expedited approval, any completed application which meets the priority criteria and to evaluate the priority classification of applications on hand at least once every three months.

In addition, pursuant to Title VI, RUS will set up a State reserve in which, for the first 6 months of each fiscal year, the available funding for the fiscal year is allocated among the States, territories, and insular possessions based on the number of communities with populations of 2,500 or less in each State, territory, and insular possession in relation to the total number of such communities in the United States, its territories, and insular possessions.

At the same time, RUS did not want completed, feasible applications which did not meet the priority consideration to go unfunded until the end of the fiscal year. Consequently, RUS came up with a priority system which allows for the funding of completed, feasible applications in a timely manner so long as funding is available in the applicant's state reserve or, after April 1 of the fiscal year, the national reserve.

RUS will expedite for consideration for funding, applications proposing to provide service where none is physically available on a first-in, first-out basis. RUS will also give a lesser priority to those areas currently receiving service but (1) at rates that are not comparable to those in neighboring urban and suburban areas or (2) of quality that is considered unsatisfactory due to, among other criteria, data rate restrictions, system latency, or unreliable connections.

**One-time priority for pilot program applicants.** Language in the Conference Report accompanying the 2002 Act (H.R. Rpt. 107-424, 107th Cong. 2nd Sess., 579), specifically states, "The Managers expect the RUS to evaluate the priority status of all pending broadband applications as soon as practicable after the date of enactment. Any completed application which meets the priority criteria should be evaluated for expedited approval."